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U.S. Specialty Insurance Company

17
18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
20

21 U.S. TELEPACIFIC CORP., d/b/a TPx
COMMUNICATIONS, a California
22 corporation,

23 Plaintiff,

24 v.

25 U.S. SPECIALTY INSURANCE
COMPANY, and DOES 1-10,
26 inclusive,

27 Defendants.
28

Case No. 2:18-cv-5083 DMG (AGR_x)

JOINT STIPULATION FOR A
PROTECTIVE ORDER
CONCERNING CONFIDENTIAL
INFORMATION

Hon. Dolly M. Gee

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, Plaintiff U.S. TelePacific Corp., d/b/a TPx Communications (“TPx”) and
6 Defendant U.S. Specialty Insurance Company (“U.S. Specialty”) hereby stipulate to
7 and petition the Court to enter the following Stipulated Protective Order. The parties
8 acknowledge that this Order does not confer blanket protections on all disclosures or
9 responses to discovery and that the protection it affords from public disclosure and use
10 extends only to the limited information or items that are entitled to confidential
11 treatment under the applicable legal principles. The parties further acknowledge, as set
12 forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them
13 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a party
15 seeks permission from the court to file material under seal.

16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets and other valuable research,
18 development, commercial, financial, technical and/or proprietary information for which
19 special protection from public disclosure and from use for any purpose other than
20 prosecution of this action is warranted. Such confidential and proprietary materials and
21 information consist of, among other things, confidential business or financial
22 information, information regarding confidential business practices, or other confidential
23 research, development, or commercial information (including information implicating
24 privacy rights of third parties), information otherwise generally unavailable to the
25 public, or which may be privileged or otherwise protected from disclosure under state
26 or federal statutes, court rules, case decisions, or common law. Accordingly, to
27 expedite the flow of information, to facilitate the prompt resolution of disputes over
28 confidentiality of discovery materials, to adequately protect information the parties are

entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: this pending federal law suit.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
7 this Action but are retained to represent or advise a party to this Action and have
8 appeared in this Action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
18 their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 3. SCOPE

24 3.1 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also (a) any information copied or extracted
26 from Protected Material; (b) all copies, excerpts, summaries, or compilations of
27 Protected Material; and (c) any testimony, conversations, or presentations by Parties or
28 their Counsel that might reveal Protected Material.

1 3.2 Any use of Protected Material at trial shall be governed by the orders of
2 the trial judge. This Order does not govern the use of Protected Material at trial.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
6 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
7 later of (1) dismissal of all claims and defenses in this Action, with or without
8 prejudice; and (2) final judgment herein after the completion and exhaustion of all
9 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
10 for filing any motions or applications for extension of time pursuant to applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.
13 Each Party or Non-Party that designates information or items for protection under this
14 Order must take care to limit any such designation to specific material that qualifies
15 under the appropriate standards. The Designating Party must designate for protection
16 only those parts of material, documents, items, or oral or written communications that
17 qualify so that other portions of the material, documents, items, or communications for
18 which protection is not warranted are not swept unjustifiably within the ambit of this
19 Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified or that have been made for an improper purpose
22 (e.g., to unnecessarily encumber the case development process or to impose
23 unnecessary expenses and burdens on other parties) may expose the Designating Party
24 to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.
28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
4 must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
10 contains protected material. If only a portion or portions of the material on a page
11 qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and before
16 the designation, all of the material made available for inspection shall be deemed
17 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
18 copied and produced, the Producing Party must determine which documents, or
19 portions thereof, qualify for protection under this Order. Then, before producing the
20 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to
21 each page that contains Protected Material. If only a portion or portions of the material
22 on a page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins).

24 (b) for testimony given in depositions that the Designating Party
25 identify the Disclosure or Discovery Material on the record, before the close of the
26 deposition all protected testimony.

27 (c) for information produced in some form other than documentary and
28 for any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information is stored the legend
2 “CONFIDENTIAL.” If only a portion or portions of the information warrants
3 protection, the Producing Party, to the extent practicable, shall identify the protected
4 portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive the
7 Designating Party’s right to secure protection under this Order for such material. Upon
8 timely correction of a designation, the Receiving Party must make reasonable efforts to
9 assure that the material is treated in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s Scheduling
13 Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
18 to harass or impose unnecessary expenses and burdens on other parties) may expose the
19 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
20 the confidentiality designation, all parties shall continue to afford the material in
21 question the level of protection to which it is entitled under the Producing Party’s
22 designation until the Court rules on the challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this
26 Action only for prosecuting, defending, or attempting to settle this Action. Such
27 Protected Material may be disclosed only to the categories of persons and under the
28

1 conditions described in this Order. When the Action has been terminated, a Receiving
2 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
8 may disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
10 well as employees of said Outside Counsel of Record to whom it is reasonably
11 necessary to disclose the information for this Action;

12 (b) the officers, directors, and employees (including House Counsel) of
13 the Receiving Party to whom disclosure is reasonably necessary for this Action, and
14 any reinsurer, accountant, actuary, auditor or regulator to whom the Party (or its
15 counsel) has an obligation to report and/or to provide access to its files;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) professional jury or trial consultants, mock jurors, and Professional
22 Vendors to whom disclosure is reasonably necessary for this Action and who have
23 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information;

26 (h) during their depositions, witnesses, and attorneys for witnesses, in
27 the Action to whom disclosure is reasonably necessary, provided that the witness and
28 their counsel will not be permitted to keep any confidential information unless they sign

1 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
2 agreed by the Designating Party or ordered by the court. Pages of transcribed
3 deposition testimony or exhibits to depositions that reveal Protected Material may be
4 separately bound by the court reporter and may not be disclosed to anyone except as
5 permitted under this Stipulated Protective Order; and

6 (i) any mediator or settlement officer, and their supporting personnel,
7 mutually agreed upon by any of the parties engaged in settlement discussions.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
9 OTHER LITIGATION

10 8.1 If a Party is served with a subpoena or a court order issued in other
11 litigation that compels disclosure of any information or items designated in this Action
12 as “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall include a
18 copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be affected.

21 8.2 If the Designating Party timely seeks a protective order, the Party served
22 with the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this Action to
28 disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 9.1 The terms of this Order are applicable to information produced by a Non-
4 Party in this Action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the remedies
6 and relief provided by this Order. Nothing in these provisions should be construed as
7 prohibiting a Non-Party from seeking additional protections.

8 9.2 In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party’s confidential
11 information, then the Party shall:

12 (a) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality agreement
14 with a Non-Party;

15 (b) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (c) make the information requested available for inspection by the Non-
19 Party, if requested.

20 9.3 If the Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party’s confidential information responsive to the discovery request.
23 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
24 any information in its possession or control that is subject to the confidentiality
25 agreement with the Non-Party before a determination by the court. Absent a court
26 order to the contrary, the Non-Party shall bear the burden and expense of seeking
27 protection in this court of its Protected Material.
28

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the specific
6 Protected Material at issue. If a Party's request to file Protected Material under seal is
7 denied by the court, then the Receiving Party may file the information in the public
8 record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 After the final disposition of this Action, as defined in paragraph 4, within 60
11 days of a written request by the Designating Party, each Receiving Party must return all
12 Protected Material to the Producing Party, destroy such material, or continue to retain
13 Protected Material so long as such Protected Material is held in the strictest confidence
14 and remains subject to the provisions of this Order. As used in this subdivision, "all
15 Protected Material" includes all copies, abstracts, compilations, summaries, and any
16 other format reproducing or capturing any of the Protected Material. Whether the
17 Protected Material is returned, destroyed, or retained pursuant to this Order, the
18 Receiving Party must submit a written certification to the Producing Party (and, if not
19 the same person or entity, to the Designating Party) by the 60 day deadline that they
20 have undertaken efforts to ensure to the best of their abilities that all Protected Material
21 in their possession or control has been returned or destroyed or will continue to be held
22 in the strictest confidence and pursuant to the provisions of this Order.

23 14. Any violation of this Order may be punished by any and all appropriate measures
24 including, without limitation, contempt proceedings and/or monetary sanctions.

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:**

2 Dated: September 18, 2018

Dated: September 18, 2018

3 PASICH LLP

CLYDE & CO US LLP

4 By: /s/ Michael S. Gehrt
5 Shaun H. Crosner (SBN 259065)
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Attorneys for Plaintiff
U.S. TelePacific Corp.,
d/b/a TPx Communications

Attorneys for Defendant
U.S. Specialty Insurance Company

13 **FOR GOOD CAUSE, IT IS SO ORDERED** on this 26th day of September, 2018:

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15 The Honorable Alicia G. Rosenberg
16 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____, do solemnly swear that I am fully familiar with the terms of the Protective Order Concerning Confidential Information entered in *U.S. TelePacific Corp., d/b/a TPx Communication v. U.S. Specialty Insurance Co.*, United States District Court for the Central District of California, Civil Action No. 2:18-cv-5083 DMG (AGRx), and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of the Court. I hereby consent to the jurisdiction of the Court for purpose of enforcing this nondisclosure agreement.

DATED: _____

[Name of Signator Typed]

1 **CERTIFICATE OF SERVICE**

2 Pursuant to 28 U.S.C. § 1746, I hereby certify that a copy of the **JOINT**
3 **STIPULATION FOR A PROTECTIVE ORDER** was served via the United States
4 District Court CM/ECF system on the following parties or persons requiring notice:

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10 *Attorneys for Plaintiff*

11 Dated: September 18, 2018

12 By: /s/ James P. Koelzer
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